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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/753,381	01/02/2001	Eddy Van Beek	4532670/44892	1681

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EXAMINER

MARX, IRENE

ART UNIT	PAPER NUMBER
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1651

DATE MAILED: 02/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/753,381

Applicant(s)

BEEK ET AL.

Examiner

Irene Marx

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 8 and 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/11/03 has been entered.

Claims 1-7 are being considered on the merits.

Claims 8-9 are withdrawn from consideration as directed to a non-elected invention.

The amendment filed 8/11/03 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows:

The amendment to Tables 1 and 2 to replace "Relative NDF breakdown" with "Percent NDF remaining". The nexus between these two concepts is unclear.

Applicant is required to cancel the new matter in the reply to this Office Action.

Response to Arguments

Applicant's arguments have been fully considered but they are not deemed to be persuasive.

Applicants argue that Table II shows that lysolecithin shows the breakdown of neutral detergent fiber to be the most effective at breaking down NDF at 89.80%. Applicants also assert that "Relative NDF breakdown" really means "Percent NDF remaining". However, there is no clear evidence to demonstrate this assertion. See also the new matter rejection *supra*.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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Claims 1-7 are/remain rejected under 35 U.S.C. 103(a) as being unpatentable over Bedford *et al.* taken with Garnett *et al.* and Baisted for the reasons as stated in the last Office action and the further reasons below..

Response to Arguments

Applicant's arguments have been fully considered but they are not deemed to be persuasive.

Applicant's argument is that the examiner has misapprehended and mischaracterized the invention because *in vitro* data is required to test the effectiveness of the enzyme compositions of the present invention. However, it is noted with all due respect that the claims are not directed to measuring enzymatic degradation, but rather to improving enzymatic degradation of components in animal feed. The improved effect of an enzyme occurs intrinsically upon adding lysolecithin and is not dependent on whether the degradation is measured or not or on the nature of the test used to test the extent of degradation. All this is required is "improving" degradation by addition of any amount of lysolecithin to a feed composition comprising any enzyme. Where or how the lysolecithin combination with an enzyme occurs does not affect the improvement in degradation.

With respect to the unexpected results alleged by applicant, it is noted that the results of the Table II pertain only to the use of a specific composition containing 16% of Bolec MT, which contains an undefined proportion of lysolecithin. This composition is shown to be useful to enhance improve degradation by a specific xylanase in a specific feed composition and not **any** enzyme using **any** concentration of an unidentified lysolecithin in any type of animal composition as now claimed. The actual amount of "lysolecithins" used to obtain the touted results is not disclosed. It is emphasized that the claim designated invention does not require a specific amount of lysolecithin, except for claims 6 and 7, wherein a broad range of amounts of unidentified lysolecithins is included in animal feeds of unidentified composition to which any enzyme whatsoever is added. It is also noted. that from the invention as claimed it is not, in fact, clear that the improved degradation is due to the enzyme that is added exogenously or to an enzyme already present in the composition.

Therefore, the showing is not commensurate in scope with claims directed to unidentified enzymes in combination with any lysolecithin surfactant in any amount or to a laundry list of enzymes having various activities. The scope of the showing must be commensurate with the

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scope of claims to consider evidence probative of unexpected results, for example. In re Dill, 202 USPQ 805 (CCPA, 1979), In re Lindner 173 USPQ 356 (CCPA 1972), In re Hyson, 172 USPQ 399 (CCPA 1972), In re Boesch, 205 USPQ 215, (CCPA 1980), In re Grasselli, 218 USPQ 769 (Fed. Cir. 1983), In re Clemens, 206 USPQ 289 (CCPA 1980). It should be clear that the probative value of the data is not commensurate in scope with the degree of protection sought by the claim.

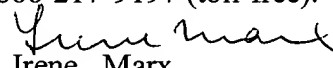
Therefore the rejection is deemed proper and it is adhered to.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (571) 272-0919. The examiner can normally be reached on M-F (6:30-3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on (571) 272-0926. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Irene Marx
Primary Examiner
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